150.

SUPREME COURT OF THE UNITED STATES.

No. 165.

WILLIAM H. PHILLIPS, PLAINTIFF IN ERROR,

vs.

GEORGE PAGE.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE NORTHERN DISTRICT OF NEW YORK.

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GIDEON, Print.

UNITED STATES OF AMERICA,
Northern District of New York, ss.

I, Augustus A. Boyce, clerk of the circuit court of the United States of America for the northern district of New York, in the second circuit, having inspected the files and records of my said office, do hereby certify that the following writings annexed to this certificate are and comprise a true copy of an original record of judgment on file and remaining of record in my office.

In testimony whereof, I have hereunto subscribed my name, and have caused the seal of the said court to be hereunto affixed at the city of Utica, in the northern district of New York, in the second circuit, this 2d day of January, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the said United States the eighty-second.

[L. S.]

AUG. A. BOYCE, *Clerk*.

UNITED STATES OF AMERICA, *ss*.

The President of the United States of America to the judges of the Circuit Court of the United States of the second circuit and the northern district of New York, greeting:

Because in the record and proceedings, and also in the rendition of a judgment in a plea which is in the said circuit court for the northern district of New York before you, between George Page, plaintiff, and William H. Phillips, defendant, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears:

And it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of February next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this first Monday of December, in the year of our Lord one thousand eight hundred and

fifty-seven, and of the independence of the United States the eighty-second.

AUG. A. BOYCE, *Clerk*.

I allow the foregoing writ this 28th day of December, 1857.

N. K. HALL,
Dist. Judge.

Filed Dec. 29th, 1857.

UNITED STATES OF AMERICA, *ss*

To George Page, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of February next, pursuant to a writ of error issued out of the said court and filed in the clerk's office of the circuit court of the United States for the second circuit and northern district of New York, wherein William H. Phillips is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this first Monday of December, 1857. Signed the 28th December, 1857.

N. K. HALL,
U. S. Dist. Judge.

Filed Dec. 29, 1857.

I admit due personal service of a copy of the within citation this 29th day of December, 1857.

GEORGE PAGE.
By H. B. NORTHUP,
His Attorney.

United States Circuit Court, northern district of New York.

GEORGE PAGE
vs.
WILLIAM H. PHILLIPS.

At which day and place, that is to say, at the City Hall in the city of Albany, on the second Tuesday of December, 1856, came the parties aforesaid, by their attorneys aforesaid, in the said court, before the Hon. Nathan K. Hall, one of the judges thereof, then and there holding the same court; and the jurors of the jury, whereof mention is within made, being called, likewise came, and after being elected, tried and sworn, to try the issues within joined, the counsel for the plaintiff, on his behalf, gave in evidence letters patent, with the specifications and diagrams thereto attached, of all which the following is a copy—that is to say:

No. 2,174.

The United States of America, to all to whom these letters patent shall come:

Whereas George Page, Baltimore, Maryland, has alleged that he has invented a new and useful improvement in the portable circular saw-mill, which he states has not been known or used before his application, has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said improvements, and that the same hath not to the best of his knowledge and belief been previously known or used; has paid into the treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents signifying a desire of obtaining an exclusive property in the said improvements, and praying that a patent may be granted for that purpose:

These are therefore to grant, according to law, to the said George Page, his heirs, administrators or assigns, for the term of fourteen years from the sixteenth day of July, one thousand eight hundred and forty-one, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvements, a description whereof is given in the words of the said George Page, in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof, I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed. [L. S.]

Given under my hand, at the city of Washington, this sixteenth day of July, in the year of our Lord one thousand eight hundred and forty-one, and of the independence of the United States of America the sixty-sixth.

DANIEL WEBSTER,
Secretary of State.

Countersigned and sealed with the seal of the Patent Office.

HENRY L. ELLSWORTH,
Commissioner of Patents.

The schedule referred to in these letters patent, and making part of the same.

To all whom it may concern:

Be it known, that I, George Page, of the city of Baltimore, in the State of Maryland, have invented certain improvements in the manner of constructing a saw-mill for sawing timber, which I denominate the portable circular saw-mill, and I do hereby declare that the following is a full and exact description thereof:

Fig. 1, in the accompanying drawing, is a perspective view of my portable saw-mill. A A is a square frame which sustains

the saw and the driving apparatus; this frame is firmly mortised and bolted together, so that it may be readily lifted from the ground and placed upon a suitable carriage for transportation; its usual length is about seven feet and a half, and its width four feet and a half. B is the driving pulley, to which the motive power of horses is to be applied in any of the ordinary modes; this pulley is placed upon the shaft C of the circular saw D. The shaft C has free end-play within the boxes in which it runs, so as not, in any case, to have an end bearing against a shoulder; it may, in fact, be a cylinder of the same diameter throughout. The saw is kept in place entirely by the action of two friction rollers, which bear upon its two sides near its periphery: one of these is seen at *a*, the other being immediately opposite to it. These friction rollers are made adjustable by causing them to revolve on pins, which are themselves attached by two plates of metal, placed one upon the other, having tightening screws passing through slots in them and entering the frame. The uppermost of these plates is marked *b*, and the tightening screws are seen at *c c*. The saw D is made with its teeth in a peculiar form, by which they are enabled to be fed into the timber more deeply than can be done with teeth in the forms usually employed, and the saw may therefore be driven with a speed not exceeding one half of the ordinary velocity of such saws, and from this circumstance, combined with the manner of sustaining the saw at its edge without strain from its centre, and with the manner of setting the teeth, it is kept free from all tendency to heating and buckling, and is thereby well adapted to the sawing of ordinary logs, which, though frequently attempted by means of the circular saw, has been abandoned from the impossibility of causing the edge of such a saw to run true for any length of time.

Fig. 2 shows a portion of my saw, with the manner of forming the teeth; the dotted lines represent the periphery of the circle which the teeth describe, and the line *e f*, the manner in which the periphery is filed away between the contiguous teeth, which filing away is intended to correspond with the amount of feed given, by which device the saw is made to run with unusual smoothness, and the part cut away, instead of coming out in the ordinary form of saw-dust, exhibits frequently the appearance of parings or shavings five or six inches in length. The saw is usually about five feet in diameter; the plate is made of the usual spring temper of saw-plates, but the points of the teeth I harden to the usual temper of chisels and other cutting instruments; this is readily effected by heating them between red-hot tongs, quenching and drawing them down to the desired temper. The saw, if desired, may be sharpened by grinding by means of a suitable apparatus, instead of by filing. The teeth are not to be set in the usual way, but are to be upset at the point by means of a punch, which will widen them out, and will enable them

to run clear and cut unusually clear. E is a grooved wheel on the saw-shaft, carrying two bands; one of these bands, *g*, passes round the wheel E, and the other, *h*, round the wheel G, the latter band slipping the wheel except when the log is to be backed. Upon the shaft of the wheel E is the pinion H, which gears into the wheel I; the wheel G is fixed upon the outer end of the shaft J of this wheel, and the pinion K upon its inner end. The pinion K mashes into a rack on the under side of the rack rail L L, for moving the carriage and log in the ordinary way. The rapidity of the feed will of course be governed by the relative sizes of the wheels, wheel and pinions, which constitute the gearing, and may be regulated at pleasure; the wheels E and G, and the band *h*, are for backing the log, which is done without interrupting the motion of the horses, and is effected in the following manner: the pinion H is to be thrown out of gear with the wheel I; to accomplish this the box that sustains the end of the shaft to which the pinion H is attached is affixed in the sliding piece M, and may be moved back by means of the lever N, and be held by a pin *i*, catching into a notch on the latch piece *j*; the loose band *h* is then tightened by bearing upon the lever O, which raises a tightening pulley against the lower portion of the band *h*, thus reversing the ordinary motion of the wheel I, and pinion K, and backing the log. P P is the saw carriage, and Q Q the ways on which it runs; I make the carriage in sections or lengths admitting of convenient removal; they need not be longer than the frame A A, although they are not restricted to any particular length; two such sections are shown as connected with each other by a clasp or saddle piece, at R; these sections may either represent a single carriage as shown in the drawing, the head block being placed upon one of them and the tail block upon the other, or they may represent two separate carriages connected together by the piece R, and each being furnished with its own proper head and tail block, and carrying distinct logs; I usually employ two carriages in this way, each of which may consist of combined sections. By this means, time is much economized, as one of the logs may be set whilst the other is being sawed. When it is necessary to use a long carriage, it may be composed of two sections only of ordinary length, by running them to the proper distance from each other, and connecting them together by any additional rack rail, L L, which manner of combining these parts will have all the effect of a long carriage; said additional rack rail to be secured at its two ends by any convenient means. The ways Q Q, upon which the carriage is to run, may be prepared in the woods in any place in which the saw-mill is to be used, any suitable logs being hewed for that purpose, and the strips of iron K, K, which constitute the tongue, and upon which the carriage is to slide, being nailed on to them. The carriages may be about three feet in width. S S are the head and tail blocks,

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84 6.

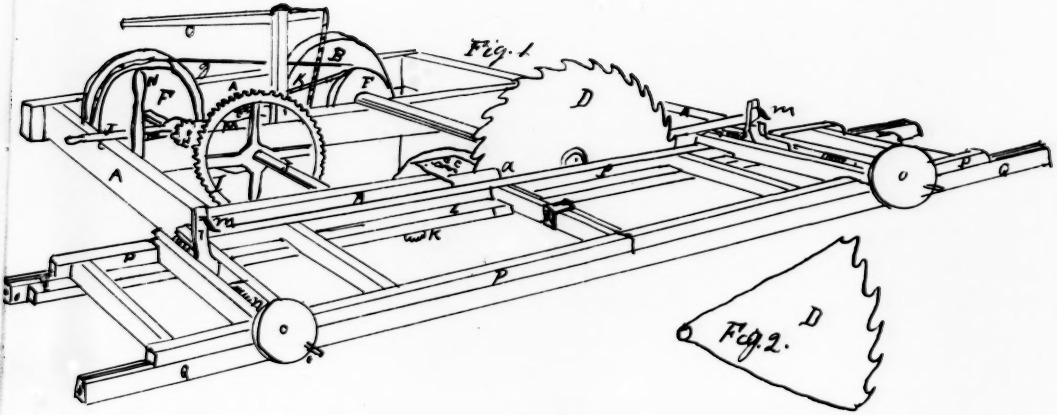

Fig. 1

Fig. 2.

which are furnished with dogs or hold-fasts, particularly adapted to this kind of saw-mill; *l l* is a rectangular piece of iron, the horizontal portion of which, *l*, slots between the cheeks of the head and tail blocks in grooves prepared for that purpose, and the vertical part O has a screw *m* through it, which is turned by a winch, is pointed at its end, and is screwed into the log. The log is to be set by means of a screw *n*, working in a nut on the lower side of the piece *l*, and turned by the handle O. If the screws *n n* have threads of one-fourth of an inch, four turns of the handle O will of course set the log an inch; and, whatever may be the size of the threads, they will serve as perfect gauges in the setting, upon the same principle.

Having thus fully described the manner in which I construct my improved portable circular saw-mill, and shown the use and operation of the respective parts thereof, what I claim therein as new, and desire to secure by letters patent, is as follows:

I claim the manner of affixing and guiding the circular saw by allowing end play to its shaft in combination with the means of guiding it by friction rollers, embracing it near to its periphery so as to leave its centre entirely unchecked laterally. I do not claim the use of friction rollers, embracing and guiding the edge of a circular saw, these having been previously used for that purpose, but I limit my claim to their use in combination with a saw having free lateral play at its centre. I claim the particular manner in which I have applied said friction rollers by attaching the pins or pivots upon which they are sustained and revolve, to two plates of metal placed upon each other, and both held by the same set screws, as set forth. I claim the manner of forming a long carriage from two short sections, by coupling or uniting said sections by means of the rack-rail only, as described.

GEO. PAGE.

Witnesses:
THOS. V. JONES,
THOS. COPELAND.

George Page's Circular Saw-Mill.—Patented July 16, 1841.

[*For diagram see original, page* 14.]

References.

A, frame. B, drum or driving pulley. C, arbor or saw-shaft. D, circular saw. E, pulley on saw-arbor. F, feeding pulley. G, drum driven from E in giging back. H, pinion driving the feed works. I, geared feed wheel. J, shaft of the same. K, jack on pinion for driving carriage. L, carriage rack or side bar. M, clutch for ungearing feed wheels. N, lever for moving the same. O, band tightener for giging back. P, carriage for log.

Q, ways or track for same. *a*, guide roller. *b*, plate holding the same. *c*, set screws in do. *g*, band for driving feeding pulley. *h*, band for giging back. *i*, pin. *l l*, setting dog. *m*, screw in head block. *n*, setting screw carrying dog *l*. *o*, crank wheel for turning setting screw.

And therefore the plaintiff gave evidence tending to show that the defendant had infringed the rights of the plaintiff, under his said patent, by the use, in the month of June, 1855, of the invention patented to the plaintiff, and also evidence tending to show the amount of damages which the plaintiff had sustained by reason of such alleged infringement.

It was then admitted that the invention so patented to the plaintiff, if original with him, was of sufficient utility to sustain the patent, and that the suit was commenced on the 13th of July, 1855.

The plaintiff then rested; and thereupon the defendant gave evidence tending to prove, that long prior to the time when said letters patent were granted, and for some years immediately prior to the time when the plaintiff claims to have made the invention patented as aforesaid, machines for sawing shingles from short blocks of timber, and for sawing lath, and blind stuff, and other small stuff with circular saws, varying in size from ten to thirty inches in diameter, had been in public use; in which machines the circular saw was guided by means of guide pins, embracing it near the periphery, its shaft having end play, and being entirely unchecked laterally; but it did not appear by such proof that such machines had been used in a saw-mill for sawing timber, or in a mill or a machine of a size or character adapted to the sawing of ordinary logs or other large unsawed timber.

The defendant also gave evidence tending to prove that some of the persons who had so used and operated circular saws of the kind and for the purposes hereinbefore mentioned, with unchecked end play to the shaft, to which the saw was affixed, and with guide pins near its periphery as aforesaid, had recognised the advantage of so arranging any guiding saws for the said purposes, and had also, prior to the plaintiff's alleged invention, suggested such mode of arranging and guiding similar saws for like purposes, in order to cure defects in the operation of such saws, and that upon such suggestions similar arrangements for guiding and operating like circular saws for similar purposes were adopted with success.

And the defendant also proved, that in the mill used by him the periphery of the saw was not embraced or guided by friction rollers, but by guide pins, which were admitted by both parties, for the purposes of the trial, to be equivalent to the friction rollers as a means of embracing and guiding the saw near its periphery, when end play was given to the shaft.

Plaintiff's counsel moved the court to strike out so much of the

testimony of this witness as related to the use of the saw prior to the year 1836, upon the ground that, by the notice of this defence served by the defendant, he was excluded from giving evidence of the use prior to 1836, and the court ruled that such motion be granted, to which ruling the defendant's counsel then and there excepted.

The following is a copy of said notice—that is to say:

U. S. Circuit Court, northern district of N. Y.

ads.
GEORGE PAGE.

SIR: Please take notice that on the trial of this cause the defendant will prove, in addition to the matter of which you have heretofore had notice, that prior to the time when the plaintiff claims to have discovered or invented the improvements mentioned in the declaration in this cause, or either of them, and prior to the time when the letters patent in said declaration mentioned are therein alleged to have been granted, the alleged improvement first mentioned in the claim of the plaintiff contained in the specifications annexed to said letters patent—that is to say, "the manner of affixing and guiding the circular saw by allowing end play to its shaft, in combination with the means of guiding it by friction rollers embracing it near its periphery, so as to leave its centre entirely unchecked laterally"—was known, adopted, and used at Fitchburg, in the county of Worcester and State of Massachusetts, in each year of the eleven years next preceding the 16th day of July, 1841, and continually during eleven years next preceding said 16th day of July; also at Danby, in the county of Tompkins and State of New York, in each year of the seven years next preceding said 16th day of July, and continually during seven years next preceding that day; also at Veteran, in the county of Chemung and State of New York, in each of the years 1835, 1836, 1837, 1838, and 1839, and continually during those years; also at Southport, in said county of Chemung, in the year 1839 and the year 1840, and continually during those years; also at Dryden, in said county of Tompkins, in the year 1837 and in the year 1838, and continually during those years; also at Vernon, in the State of Vermont, in each of the years 1829, 1830, and 1831, and continually during those years; also at Harvard, in the county of Worcester aforesaid, in the years 1824 and 1825, and continually during those years; also at Shirley, in the county of Middlesex and State of Massachusetts, in the year 1826, and continually during that year; and also at Lunenburg, in said county of Worcester, in the year 1826 and the year 1830, and continually during those years.

That defendant intends to prove on such trial, that Albert T.

Nichols, who resides at Williamsport, in the county of Lycoming and State of Pennsylvania, and William Nichols, who resides at Granville, in the county of Bradford and State of Pennsylvania, had knowledge of such last mentioned alleged improvement, and of the adoption and use thereof at Fitchburg, as aforesaid, during the five years next preceding said 16th day of July; that said Albert T. and William Nichols then resided at Leominster, in said county of Worcester. That Samuel D. Foster, who resides at Barton, in the county of Tioga and State of New York, and Lot Foster, jr., who resides at Towanda, in the county of Bradford and State of Pennsylvania, had knowledge of such last mentioned alleged improvement, and of the adoption and use thereof at Danby, as aforesaid, during the seven years next preceding said 16th day of July; that said Fosters then resided at Danby aforesaid. That Eli Wheeler, who resides at Elmira, in the county of Chemung and State of New York, had knowledge of such last mentioned alleged improvement, and of the adoption and use thereof at Veteran, as aforesaid, during the years 1835, 1836, 1837, 1838, and 1839; that said Wheeler then resided at Veteran aforesaid. That James M. Van Duzer, who resides at Veteran aforesaid, and said Eli Wheeler, had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Southport, as aforesaid, during the years 1839 and 1840; that said Van Duzer then resided at Veteran aforesaid, and said Wheeler at Southport aforesaid. That George W. Hathaway, who resides at Spencer, in the county of Tioga and State of New York, had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Dryden, as aforesaid, during the years 1837 and 1838; that said Hathaway then resided at Dryden aforesaid. That Ira Younglove, who resides at Fitchburg aforesaid, had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Vernon, as aforesaid, during the years 1829, 1830, and 1831; that said Younglove then resided at Vernon aforesaid. That Hiram Davis, who resides at Fitchburg aforesaid, had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Fitchburg, as aforesaid, during the years 1836, 1837, 1838, 1839, 1840, and 1841; that said Davis then resided at Fitchburg aforesaid. That John H. Wheeler, who resides at Fitchburg aforesaid, had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Fitchburg, as aforesaid, during the eleven years next preceding said 16th day of July; that said John H. Wheeler then resided at Fitchburg aforesaid. That Andrew P. Conant, who resides at Leominster aforesaid, had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Fitchburg, as aforesad, during the years 1836, 1837, 1838, and 1839; that said Conant then resided

at Fitchburg aforesaid. That Seth G. Pitts, who resides at Bridgport, in the State of Connecticut, and Henry W. Pitts, who resides at Middletown, in the State of Vermont, had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Fitchburg, as aforesaid, during the years 1835 and 1836; that said Seth G. and Henry W. Pitts then resided at Fitchburg aforesaid. That said Ira Younglove had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Fitchburg, as aforesaid, during the year 1831; that he then resided at Fitchburg aforesaid. That Peter Washburn, who resides at Fitchburg aforesaid, had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Harvard, as aforesaid, during the years 1824 and 1825, and at Lunenburg and Shirley, as aforesaid, during the year 1826, and at Lunenburg, as aforesaid, during the year 1830, during which several periods he resided at Shirley aforesaid.

Also, that prior to the time when said letters patent are in said declaration alleged to have been granted, and prior to the time when the plaintiff claims to have invented or discovered said improvements, or either of them—the manner of affixing, guiding, and operating the circular saw by allowing end play to its shaft, in combination with the means of guiding it by pegs, pins, or other means applied to the saw, embracing it near its periphery, and leaving it unchecked laterally at its centre—was known, adopted, and used at Fitchburg aforesaid, in each year of the eleven years next preceding the 16th day of July, 1841, and continually during eleven years next preceding said 16th day of July; also at Danby aforesaid, in each year of the seven years next preceding said 16th day of July, and continually during seven years next preceding that day; also at Veteran aforesaid, in each of the years 1835, 1836, 1837, 1838, and 1839, and continually during those years; also at Southport aforesaid, in the year 1839 and the year 1840, and continually during those years; also at Dryden aforesaid, in the year 1837 and in the year 1838, and continually during those years; also at Vernon aforesaid, in each of the years 1829, 1830, and 1831, and continually during those years; also at Harvard aforesaid, in the years 1824 and 1825, and continually during those years; also at Shirly aforesaid, in the year 1826, and continually during that year; and also at Lunenburg aforesaid, in the year 1826 and the year 1830, and continually during those years.

That defendant intends to prove on such trial, that the said Albert T. Nichols and William Nichols had knowledge of such last mentioned alleged improvement, and of the adoption and use thereof at Fitchburg, as aforesaid, during the five years next preceding said 16th day of July. That the said Samuel D. Foster and Lot Foster, jr., had knowledge of such last mentioned alleged improvement, and of the adoption and use thereof at Danby, as aforesaid,

during the seven years next preceding said 16th day of July. That the said Eli Wheeler had knowledge of such last mentioned alleged improvement, and of the adoption and use thereof at Veteran, as aforesaid, during the years 1835, 1836, 1837, 1838, and 1839. That the said James M. Van Duzer and said Eli Wheeler had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Southport, as aforesaid, during the years 1839 and 1840. That the said George W. Hathaway had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Dryden, as aforesaid, during the years 1837 and 1838. That the said Ira Younglove had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Vernon as aforesaid, during the years 1829, 1830, and 1831. That the said Hiram Davis had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Fitchburg, as aforesaid, during the years 1836, 1837, 1838, 1839, 1840, and 1841. That the said John H. Wheeler had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Fitchburg, as aforesaid, during the eleven years next preceding said 16th day of July. That the said Andrew P. Conant had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Fitchburg, as aforesaid, during the years 1836, 1837, 1838, and 1839. That the said Seth G. Pitts and Henry W. Pitts had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Fitchburg, as aforesaid, during the years 1835 and 1836. That the said Ira Younglove had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Fitchburg, as aforesaid, during the year 1831. That the said Peter Washburn had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Harvard, as aforesaid, during the years 1824 and 1825; and at Lunenburg and Shirley, as aforesaid, during the year 1826; and at Lunenburg, as aforesaid, during the year 1830.

Dated August 26, 1856.

Yours, &c.,

Defendant's Attorneys.

To H. B. Northup, Esq.,
Plaintiff's Attorney.

The evidence being closed, the defendant's counsel thereupon prayed the court to charge the jury that according to the true construction of the plaintiff's patent, the first claim of the plaintiff's specification is limited in terms *in terms* to the manner of affixing and guiding the circular saw by allowing end-play to its shaft, in combination with the means of guiding it by friction rollers em-

bracing it near its periphery, so as to leave its centre entirely unchecked laterally: and that this, in judgment of law, includes all equivalents for either of the elements of such combination.

The court refused so to charge the jury, but instead thereof decided and charged the jury, that according to the true construction of said patent, the first claim is limited in terms to the manner of affixing and guiding the circular saw, by allowing end-play to its shaft, in combination with the means of guiding it by friction rollers embracing it near its periphery, so as to leave its centre entirely unchecked laterally in a saw-mill capable of being applied to the sawing of ordinary logs, and that this, in judgment of law, includes all mechanical equivalents for either of the elements of such combination.

To which refusal so to charge, and also to such decision and charge, the defendant's counsel then and there excepted.

The defendant's counsel prayed the court further to charge the jury, that if they should find, that prior to the date of the plaintiff's invention, circular saws were guided near their periphery by means of guide rollers, or their equivalents, in combination with the free end-play of the shaft, for the purpose of sawing, they must find for the defendants, whether such saws were used for sawing large logs into plank, or for re-sawing lumber which had been previously sawed by other means.

The court refused so to charge the jury, but charged them, in lieu thereof, that if they should find, that prior to the date of the plaintiff's invention, circular saws were guided near their periphery by means of guide-rollers, or their equivalents, in combination with the free end-play, for the purposes of sawing, in mills of a size and character adapted to the sawing of ordinary logs, they must find for the defendant, whether such saws were used for sawing large logs into plank or for re-sawing lumber which had previously been sawed by other means.

And the defendant's counsel then and there excepted to such refusal to charge as so prayed.

And the defendant's counsel further prayed the court to charge the jury, that if they should find that the same combination claimed by the plaintiff's patent previously existed in an organized machine for sawing, they must find for the defendants, irrespective of the size of the saw previously used, or the name and size of the articles sawed in such prior machine, because the plaintiff in his patent had neither defined the size of the saw nor the article or articles to be sawed in mills to be constructed within the terms of his patent.

The court refused so to charge the jury, but charged them, in lieu thereof, that if they should find that such combination previously existed in an organized machine for sawing, capable of being applied to the sawing of ordinary logs, without increasing

the size of the machine, then they must find for the defendant, irrespective of the exact size of the saw so previously used or the name and size of the articles sawed in such prior machine, because the plaintiff in his patent has neither defined the size of the saw nor the article or articles to be sawed, in mills to be constructed within the terms of his patent, except by those portions of his specifications which are construed as requiring that the saw and machinery immediately connected therewith should be of a size and character adapted to the sawing of ordinary logs, as the term ordinary logs was understood at the time of the application for a patent.

And the counsel for the defendant then and there excepted to such refusal to rule and charge, and to such ruling and charge.

The court therefore charged the jury, among other things, that the plaintiff's patent is for the manner of affixing and guiding the circular saw, by allowing end play to its shaft, in combination with the means of guiding it by friction rollers, embracing it near its periphery, so as to leave its centre entirely unchecked laterally, in a saw-mill for sawing timber; such saw-mill being of a size adapted to the sawing of ordinary logs, whereby the saw is kept free from all tendency to beating or buckling, when applied to the sawing of ordinary logs.

To which charge and decision the defendants' counsel then and there excepted.

The court further charged the jury, that the plaintiff was entitled to recover in this action, provided the jury should believe that he was the original and first inventor of the improvement in the manner of constructing saw-mills for sawing timber, described in his specifications, construed as above, and that the defendant uses without license the plaintiff's invention, as so described and claimed, in a mill adapted to the sawing of ordinary logs; that if the end play of the shaft, in combination with the mode of guiding the edge of the saw, described in the plaintiff's patent, was known and used prior to the plaintiff's alleged invention, but that such prior use was not for sawing large timber, nor in a mill capable, without alteration of the parts specifically included in the plaintiff's combination, or those in direct and immediate connection therewith, of sawing lumber from ordinary logs, before finding for the plaintiff they must also find that it required invention, as contradistinguished from mere mechanical skill in construction, to apply the said mode of guiding the saw, to a previously organized circular saw-mill, of sufficient capacity for sawing large timber or ordinary logs; because, in judgment of law, the application of a known thing to a new use is not the subject-matter of letters patent.

To which ruling and charge, and each and every part thereof, the defendant's counsel then and there excepted.

And the court further ruled and charged the jury, that the term

saw-mill, used in the specifications, is to be taken in the usual ordinary acceptation of the term, when used to describe machines or mills which may be used in sawing ordinary logs into lumber; and that it is not material in this case whether the defendant's mill was or was not portable, or whether it was driven by steam, or water, or horse power.

To which ruling and charge the defendant's counsel then and there excepted.

Whereupon the jury retired, and afterwards returned into court and say they find for the plaintiff, and assess his damages, by occasion of the matters alleged in his said declaration, at fifty dollars.

And because none of the exceptions so offered and made to the ruling and charges the said court do appear upon the record of the said trial, wherefore, on the prayer of the said defendant, by his said counsel, the said judge hath to this bill of exceptions set his seal, this 13th day of December, 1856.

N. K. HALL. [L. S.]

Rec'd and signed Sept. 30th, 1857.
Filed Oct. 5th, 1857.

U. S. CIRCUIT COURT,
Northern District N. Y.

GEORGE PAGE vs. WILLIAM H. PHILLIPS. } Costs on verdict for Pl'ff.

Attorney's fees by statute		$20 00
Marshal's fees, serving capias 23d July, 1855, at Elmira, ret'ble at Albany, 292 m., at 6 c., $17 52; service writ $2		19 52
Disbursements for postage, &c., estimated		1 00
Clerk's fees, issuing capias and seal	$1 20	
Dock'g suit, $1; filing capias and ent'g ret'n, 50 c.	1 50	
Fil'g narr and ent'g rules, 50 c.; issuing 5 subps., $2 50	3 00	
Filing papers, ent'g rules, postp't and cal'n, &c.		
Fees at Feb'y circuit, 1856	1 50	
The like at June " 1856	1 50	
The like at Oct. " 1856	1 50	
The entering of rules, filing papers and oaths to witnesses, &c., as usual, on trial at Dec'r adj'd cir't, 1856	5 00	
Certf. and post'g on bill exceptions Feb'y '57	50	
Mak'g notice, arg't, copy adm'n, postages, &c., June, '57	1 00	

Copy bill excep'ns for arg't at Albany, 62 c.; and certf. Oct., '57, for att'y of pl'ff.....	$6 50	
Cal. fees, dock'g and ent'g, Oct., '57.....	1 00	
Mak'g judg't record, 34 f., at 15 cts.....	5 10	
Final docket and judg't fee.....	3 00	
Issuing ex'n, $1; seal ent'g and ret., 50 c.....	1 50	
Clerk's postages paid and accruing (say).....	1 00	
Filing record, and costs ent'g rules, final filing aff'ts, &c.....	50	
		$36 30
Marshal's fees, serving subpœnas on witnesses for Dec'r cir't, '56, viz: travel to and from Port Huron, Mich., 1,212 m., at 6 c., $72 72; serving subp., 50 c.....	73 22	
Travel to and from Lunenburg, Mass., 390 m., at 6 c., $23 40; serving 4 subps., $2.....	25 40	
Travel to and from Angelica, N. Y., 766 m., at 6 c., $45 96; serving subp., 50 c.....	46 46	
Travel to and from Sandy Hill, N. Y., 104 m., at 6 c., $6 24; serving subp., 50 c.....	6 74	
		151 82
Witnesses' fees at Dec'r cir't, '57, for travel going and returning and attendance at court, as per affidavit, viz: Jacob F. Batcheldor, of Port Huron, Mich., 1,212 m., at 5 c., is.....	60 60	
Attending court 5 days, at 12.....	7 50	
Josiah Pierce, of Lunenburg, Mass., 388 m., at 5 c.....	19 40	
Attending court 5 days.....	7 50	
Benjamin Goodrich, of same, 390 m., at 5 c....	19 50	
Attending court 5 days.....	7 50	
Wm. H. Edgerton, of same, 390 m., at 5 c.....	19 50	
Attending court 5 days.....	7 50	
Andrew P. Conant, of Lancaster, Mass., 380 m., at 5 c.....	19 00	
Attending court 5 days.....	7 50	
Frederick M. Hartshorn, of Angelica, N. Y., 766 m., at 5 c.....	38 30	
Attending court 5 days.....	7 50	
Jesse K. Sanborn, of Sandy Hill, N. Y., 104 m., at 5 c.....	5 20	
Attending court 5 days.....	7 50	
		234 00
Interest on verdict of $50 for 1 year.....		3 50
Total amount.....		$466 14

I tax the foregoing bill of costs at four hundred and sixty-six dollars and fourteen cents, this 23d day of December, 1857.

A. A. BOYCE, *Clerk*.

In the Circuit Court of the United States for the northern district of New York.

Pleas before the judges of the circuit court of the United States for the northern district of New York, in the second circuit, at the City Hall in the city of Albany, on the 23d day of November, A. D. 1855, as yet of the stated session of said court held on the third Tuesday of October, A. D. 1855, at Albany, in said district.

Witness Hon. Samuel Nelson, justice.

AUGUSTUS A. BOYCE, *Clerk*.

NORTHERN DISTRICT OF NEW YORK, *ss*.

Be it remembered that heretofore, to wit, on the 16th day of October, 1855, at a stated session of the circuit court of the United States for the northern district of New York, held at the City Hall in Albany, in said district, came George Page, pl'ff, by H. B. Northup, his attorney, and complains of William H. Phillips, defendant, by capias ad respondendum duly served on said defendant, and returnable here this day, and thereupon said plaintiff declares in trespass on the case for infringement of letters patent by the United States of America issued heretofore, and which declaration on file is in the words and figures following, to wit:

United States Circuit Court for the northern district of the State of New York, in the second circuit.

GEORGE PAGE vs. WILLIAM H. PHILLIPS. } Of Oct. Term, in the year of our Lord one thousand eight hundred and fifty-

NORTHERN DISTRICT OF NEW YORK, *ss*.

George Page, being a citizen of the United States of America, and a resident of the city of Washington, in the District of Columbia, plaintiff in this suit, by Henry B. Northrup, of the village of Sandy Hill, in the county of Washington, and State of New York, his attorney, complains of William H. Phillips, defendant, of the said northern district, of a plea of trespass on the case: for that whereas the said plaintiff, before and at the time of the making of the letters patent hereinafter mentioned, was the true and original inventor of new and useful improvements in the portable circular saw-mill, at Washington, in the District of Columbia aforesaid, to wit, at Chemung county, in said northern district of the State of New York, which said invention and improvements are fully described in the letters patent and schedulet hereto annexed, hereinafter mentioned; the same being a new and useful improvement to the portable circular saw-mill, which was not known or

used before his said invention, and which was not at the time of his application for a patent as hereinafter mentioned in public use or on sale with his consent or allowance; and the plaintiff being so as aforesaid the inventor thereof, and being also a citizen of the United States, on the sixteenth day of July, 1841, upon due application therefor, did obtain certain letters patent therefor, in due form of law, under seal of the Patent Office of the United States, signed by the Secretary of State, and countersigned by the Commissioner of Patents of the United States, bearing date the day and year aforesaid, whereby there was secured to him, his heirs, administrators or assigns, for the term of fourteen years from and after the date of the said patent, the full and exclusive right and liberty of making, using, and vending to others to be used, the said improvements, as by said letters patent in court to be produced will fully appear.

And the plaintiff further says, that from the time of the granting to him of the said letters patent hitherto, he has made, used, and vended to others to be used, the said improvements, to his great advantage and profit. Yet the said defendant well knowing the premises, but contriving to injure the plaintiff, did, on the first day of July, eighteen hundred and fifty-five, and at divers other times before and afterwards, during the said term of fourteen years mentioned in said letters patent, and before the commencement of this suit, at Elmira, in the county of Chemung, and State of New York, unlawfully and wrongfully, and without the consent or allowance, and against the will of the plaintiff, did use, and cause to be used, the said improvements, in violation and infringement of the exclusive right so secured to plaintiff by said letters patent as aforesaid, and contrary to the form of the statute of the United States in such case made and provided, whereby the plaintiff has been greatly injured and deprived of great profit and advantage, which he otherwise would have derived from said improvements, and has sustained actual damage to the amount of two hundred dollars; and by force of the statute aforesaid, an action hath accrued to him to recover the said actual damages, and such additional amount, not exceeding in the whole three times the amount of such actual damages as the court may see fit to order and adjudge, besides costs. Yet the said defendant though requested has never paid the same, or any part thereof, to the plaintiff, but has refused, and yet refuses so to do, and therefore the plaintiff brings this suit.

HENRY B. NORTHRUP,
Attorney and of Counsel for Plaintiff,
Sandy Hill, Washington Co., N. Y.

And now in this same term of October, A. D. 1855, at the City Hall in Albany, before the judge of said court, to wit, on the 26th day of November, 1855, to which day the said defendant had leave

to impart to the said declaration, comes the said defendant, William H. Phillips, by Diven, Hathaway & Woods, his attorneys, and defends the wrong and injury, where, &c., and says he is not guilty of the premises above laid to his charge, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against him, and of this he the said defendant puts himself upon the country, and the said plaintiff doth the like, &c.

DIVEN, HATHAWAY & WOODS,
Elmira, N. Y.

And it is suggested to the court now here that the defendant gave the following notice in writing of special matter to the plaintiff thirty days before trial, under section 15 of the act of Congress passed July 4th, 1836, entitled "An act to promote the progress of the useful arts, and to repeal all acts and parts of acts heretofore made for that purpose."

U. S. Circuit Court, northern district of N. Y.

WILLIAM H. PHILLIPS } ads. GEORGE PAGE.

SIR: Please take notice, that on the trial of this cause the defendant will prove, in addition to the matter of which you have heretofore had notice, that prior to the time when the plaintiff claims to have discovered or invented the improvements mentioned in the declaration in this cause, or either of them, and prior to the time when the letters patent in said declaration mentioned are therein alleged to have been granted, the alleged improvement first mentioned in the claim of the plaintiff contained in the specifications annexed to said letters patent—that is to say, "the manner of affixing and guiding the circular saw by allowing end play to its shaft, in combination with the means of guiding it by friction rollers, embracing it near its periphery so as to leave its centre entirely unchecked laterally"—was known, adopted and used at Fitchburg, in the county of Worcester, and State of Massachusetts, in each year of the eleven years next preceding the 16th day of July, 1841, and continually during eleven years next preceding said 16th day of July; also at Danby, in the county of Tompkins, and State of New York, in each year of the seven years next preceding said 16th day of July, and continually during seven years next preceding that day; also at Veteran, in the county of Chemung, and State of New York, in each of the years 1835, 1836, 1837, 1838, and 1839, and continually during those years; also at Southport, in said county of Chemung, in the year 1839 and the year 1840, and continually during those years; also at Dryden, in said county of Tompkins, in the year 1837 and in the year 1838, and continually during those years; also at Vernon, in the State of Vermont, in each

of the years 1829, 1830 and 1831, and continually during those years; also at Harvard, in the county of Worcester aforesaid, in the years 1824 and 1825, and continually during those years; also at Shirley, in the county of Middlesex, and State of Massachusetts, in the year 1826, and continually during that year; and also at Lunenburg, in said county of Worcester, in the year 1826 and the year 1830, and continually during those years.

That defendant intends to prove on such trial that Albert T. Nichols, who resides at Williamsport, in the county of Lycoming, and State of Pennsylvania, and William Nichols, who resides at Granville, in the county of Bradford, and State of Pennsylvania, had knowledge of such last mentioned alleged improvement, and of the adoption and use thereof at Fitchburg as aforesaid during the five years next preceding said 16th day of July; that said Albert T. and William Nichols then resided at Leominster, in said county of Worcester; that Samuel D. Foster, who resides at Barton, in the county of Tioga, and State of New York, and Lot Foster, jr., who resides at Towanda, in the county of Bradford, and State of Pennsylvania, had knowledge of such last mentioned alleged improvement, and of the adoption and use thereof at Danby as aforesaid during the seven years next preceding said 16th day of July; that said Fosters then resided at Danby aforesaid; that Eli Wheeler, who resides at Elmira, in the county of Chemung, and State of New York, had knowledge of such last mentioned alleged improvement, and of the adoption and use thereof at Veteran as aforesaid during the years 1835, 1836, 1837, 1838, and 1839; that said Wheeler then resided at Veteran aforesaid; that James M. Van Duzer, who resides at Veteran aforesaid, and said Eli Wheeler, had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Southport as aforesaid during the years 1839 and 1840; that said Van Duzer then resided at Veteran aforesaid, and said Wheeler at Southport aforesaid; that George W. Hathaway, who resides at Spencer, in the county of Tioga, and State of New York, had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Dryden as aforesaid during the years 1837 and 1838; that said Hathaway then resided at Dryden aforesaid; that Ira Younglove, who resides at Fitchburg aforesaid, had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Vernon as aforesaid during the years 1829, 1830, and 1831; that said Younglove then resided at Vernon aforesaid; that Hiram Davis, who resides at Fitchburg aforesaid, had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Fitchburg as aforesaid during the years 1836, 1837, 1838, 1839, 1840, and 1841; that said Davis then resided at Fitchburg aforesaid; that John H. Wheeler, who resides at Fitchburg aforesaid, had knowledge of said last mentioned alleged improve-

ment, and of the adoption and use thereof at Fitchburg as aforesaid during the eleven years next preceding said 16th day of July; that said John H. Wheeler then resided at Fitchburg aforesaid; that Andrew P. Conant, who resides at Leominster aforesaid, had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Fitchburg as aforesaid during the years 1836, 1837, 1838, and 1839; that said Conant then resided at Fitchburg aforesaid; that Seth G. Pitts, who resides at Bridgeport, in the State of Connecticut, and Henry W. Pitts, who resides at Middletown, in the State of Vermont, had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Fitchburg as aforesaid during the years 1835 and 1836; that said Seth G. and Henry W. Pitts then resided at Fitchburg aforesaid; that said Ira Younglove had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Fitchburg as aforesaid during the year 1831; that he then resided at Fitchburg aforesaid; that Peter Washburn, who resides at Fitchburg aforesaid, had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Harvard as aforesaid during the years 1824 and 1825, and at Lunenburg and Shirley as aforesaid during the year 1826, and at Lunenburg as aforesaid during the year 1830, during which several periods he resided at Shirley aforesaid.

Also, that prior to the time when said letters patent are in said declaration alleged to have been granted, and prior to the time when the plaintiff claims to have invented or discovered said improvements, or either of them, the manner of affixing, guiding, and operating the circular saw by allowing end play to its shaft, in combination with the means of guiding it by pegs, pins, or other means applied to the saw, embracing it near its periphery, and leaving it unchecked laterally at its centre, was known, adopted and used at Fitchburg aforesaid in each year of the eleven years next preceding the 16th day of July, 1841, and continually during eleven years next preceding said 16th day of July; also at Danby aforesaid in each year of the seven years next preceding said 16th day of July, and continually during seven years next preceding that day; also at Veteran aforesaid in each of the years 1835, 1836, 1837, 1838, and 1839, and continually during those years; also at Southport aforesaid in the year 1839 and the year 1840, and continually during those years; also at Dryden aforesaid in the year 1837 and in the year 1838, and continually during those years; also at Vernon aforesaid in each of the years 1829, 1830 and 1831, and continually during those years; also at Harvard aforesaid in the years 1824 and 1825, and continually during those years; also at Shirley aforesaid in the year 1826, and continually during that year; and also at Lunenburg aforesaid in the year 1826 and the year 1830, and continually during those years.

That defendant intends to prove on such trial that the said Albert T. Nichols and William Nichols had knowledge of such last mentioned alleged improvement, and of the adoption and use thereof at Fitchburg as aforesaid during the five years next preceding said 16th day of July; that the said Samuel D. Foster and Lot Foster, jr., had knowledge of such last mentioned alleged improvement, and of the adoption and use thereof at Danby as aforesaid during the seven years next preceding said 16th day of July; that the said Eli Wheeler had knowledge of such last mentioned alleged improvement, and of the adoption and use thereof at Veteran as aforesaid during the years 1835, 1836, 1837, 1838 and 1839; that the said James M. Van Duzer and said Eli Wheeler had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Southport as aforesaid during the years 1839 and 1840; that the said George W. Hathaway had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Dryden as aforesaid during the years 1837 and 1838; that the said Ira Younglove had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Vernon as aforesaid during the years 1829, 1830 and 1831; that the said Hiram Davis had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Fitchburg as aforesaid during the years 1836, 1837, 1838, 1839, 1840, and 1841; that the said John H. Wheeler had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Fitchburg as aforesaid during the eleven years next preceding said 16th day of July; that the said Andrew P. Conant had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Fitchburg as aforesaid during the years 1836, 1837, 1838 and 1839; that the said Seth G. Pitts and Henry W. Pitts had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Fitchburg as aforesaid during the years 1835 and 1836; that the said Ira Younglove had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Fitchburg as aforesaid during the year 1831; that the said Peter Washburn had knowledge of said last mentioned alleged improvement, and of the adoption and use thereof at Harvard as aforesaid during the years 1824 and 1825, and at Lunenburg and Shirley as aforesaid during the year 1826, and at Lunenburg as aforesaid during the year 1830.

Dated August 26, 1856.

Yours, &c.,

DIVEN, HATHAWAY & WOODS,

Defendant's Attorneys.

To H. B. NORTHUP, Esq.,

Plaintiff's Attorney.

And hereupon the process thereof is continued between the parties aforesaid, of the plea aforesaid, in the same court, before the judge thereof, and the issue above joined is ordered by the said court to be tried at an adjourned term thereof, appointed to be held at the City Hall, in the city of Albany, on the second Tuesday of December, in the year 1856.

At which day and place last aforesaid came the parties aforesaid, by their attorneys aforesaid, before the Honorable Nathan K. Hall, one of the judges of said court, and the jurors of the jury summoned to try the said issue being called, also come, who to speak the truth of the matters aforesaid being chosen, tried, and sworn, say, upon their oaths, that the said defendant, William H. Phillips, is guilty of the premises above laid to his charge in manner and form as the said plaintiff, George Page, hath above complained against him, and they assess the damages of the said plaintiff, by reason of the premises, over and above his costs and charges by him about his suit in this behalf expended to fifty dollars, and for those costs and charges to six cents.

Therefore it is considered that the said plaintiff do recover against the said defendant his said damages, costs and charges by the jurors aforesaid in form aforesaid assessed, and also four hundred and sixty-six dollars and fourteen cents for his costs and charges by the court now here adjudged of increase to the said plaintiff, with his assent; which said damages, costs and charges in the whole amount to five hundred and sixteen dollars and twenty cents.

An the said defendant in mercy, &c.,

Judgment signed this 23d day of December, A. D. 1857.

AUGUSTUS A. BOYCE, *Clerk*.

Filed December 23, 1857.

To the Supreme Court of the United States:

The preceding is my return to the writ of error hereto annexed.

AUG'S A. BOYCE,
Clerk of the Circuit Court of the United States
in and for the northern district of N. York.

Filed 14th June, 1858.